

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STAFFORD LEE GILL,

Defendant-Appellant.

UNPUBLISHED

July 20, 2001

No. 220261

Oakland Circuit Court

LC No. 98-161222-FH

Before: White, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver more than 650 grams of cocaine, MCL 333.7401(2)(a)(i), and conspiracy to possess with intent to deliver more than 650 grams of cocaine, MCL 750.157a. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to consecutive terms of life imprisonment. Defendant appeals as of right. We affirm.

The police executed a search warrant at 321 West Hopkins in the City of Pontiac. The subject of the warrant was documents and records related to drug trafficking. The police found defendant sitting at a kitchen table with Andre Wellons packaging crack cocaine. The police confiscated 111.68 grams of cocaine, and defendant was arrested. Although he did not own the house that was searched, the police found utility bills for that address in defendant's name. Based upon their observations of the cocaine at the kitchen table in plain view, the police sought and obtained a second search warrant for controlled substances. The police found a plastic box containing 631.10 grams of powder cocaine on a shelf in an open bedroom closet. Defendant's thumbprint was taken from the top of the container. Defendant's challenges to the validity of the initial search warrant were rejected by the trial court, and the jury found defendant guilty of possession with intent to deliver both the crack cocaine at the kitchen table and the powder cocaine from the bedroom closet.

On appeal, defendant argues that the trial court erred in refusing to quash the first search warrant. As an initial matter, the prosecutor argues that defendant lacks standing to raise this issue. We disagree. Considering the totality of the circumstances, we conclude that defendant had a reasonable expectation of privacy and that the trial court properly found that he had standing to challenge the validity of the search warrant. *People v Powell*, 235 Mich App 557, 560-561; 599 NW2d 499 (1999). The utility bills in defendant's name for the subject address

suggest that defendant was more than “merely present with the consent of the householder.” *Minnesota v Carter*, 525 US 83; 119 S Ct 469, 470; 142 L Ed 2d 373 (1998); *Powell*, *supra* at 562-563.

Defendant argues that the affidavit supporting the search warrant failed to establish probable cause because the information in the affidavit was stale and unreliable. We disagree. Our review is limited to asking “only whether a reasonably cautious person could have concluded that there was a ‘substantial basis’ for the finding of probable cause.” *People v Whitfield*, 461 Mich 441, 446; 607 NW2d 61 (2000), quoting *People v Russo*, 439 Mich 584, 605-606; 487 NW2d 698 (1992). The affiant’s assertion of probable cause was based on the following: (1) the police officer affiant’s training and experience in narcotics investigation, (2) information received from an anonymous source and a confidential informant that cocaine was being kept and sold at the subject address on an ongoing basis, (3) a controlled buy at that address within the last four weeks, and (4) the previously demonstrated reliability of the informant and the affiant’s own observations. The time lapse between the controlled buy and the issuance of the warrant is merely one factor to be considered. *Russo*, *supra* at 605-606. Under the circumstances here, we are not persuaded that the four-week delay damaged the reliability of the information in the affidavit. Nor do we agree that the anonymous or confidential sources were unreliable. Their information was confirmed by the controlled buy and, because the subject of the warrant was documents related to drug distribution, the affiant’s personal expert opinion about drug operations was the primary basis for the warrant request. We conclude that the affidavit provided a substantial basis to support a finding of probable cause. *People v Poole*, 218 Mich App 702, 706; 555 NW2d 485 (1996).

Defendant next challenges the sufficiency of the evidence supporting his conviction of conspiracy to possess with intent to deliver 650 or more grams of cocaine. The prosecution’s theory of conspiracy was based upon an agreement between defendant and Wellons. Defendant argues that the evidence was insufficient to link Wellons to the cocaine found in the bedroom. In reviewing challenges to the sufficiency of evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of conspiracy to possess with intent to deliver a controlled substance are: (1) the defendant possessed the specific intent to deliver the statutory minimum as charged, (2) his coconspirators possessed the specific intent to deliver the statutory minimum as charged, and (3) the defendant and his coconspirators possessed the specific intent to combine to deliver the statutory minimum as charged to a third person. *People v Justice (After Remand)*, 454 Mich 334, 349; 562 NW2d 652 (1997). Defendant challenges the sufficiency of the evidence of defendant’s and Wellons’ intent to combine to deliver more than 650 grams of cocaine. *Id.*

We conclude that the prosecution presented sufficient evidence from which the jury could find an agreement between defendant and Wellons to possess and deliver more than 650 grams of cocaine. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Based on the observations of the police and defendant’s statement to police, the evidence showed that defendant and Wellons conspired to possess and deliver the crack cocaine found in the kitchen

which they were packaging for sale. Additionally, the evidence was sufficient to link the powder cocaine in the bedroom to the preparation and packaging of the crack cocaine in the kitchen by defendant and Wellons.

Police Officer Mark Giroux described the process by which powder cocaine is made into crack cocaine. Defendant told police that he brought cocaine to the house to prepare it for sale.¹ Defendant did not reside at 321 W. Hopkins, yet the plastic container containing powder cocaine in the bedroom had defendant's thumbprint on it. Further, the police did not find any powder cocaine in the kitchen area. All of the cocaine in the kitchen was hard, crack cocaine. From this evidence, the jury could reasonably conclude that the crack cocaine in the kitchen which defendant and Wellons were packaging for sale was made from the powder cocaine found in the bedroom which defendant brought into the house. In addition, the evidence showed that the house was owned by Connie Wellons, Andre Wellons' mother, and also that items of correspondence bearing Andre's name were found in the house. Accordingly, the prosecution presented sufficient evidence that defendant and Wellons conspired to possess and deliver the cocaine found in the bedroom.

Defendant also argues that the admission of Officer Matthew Krupa's expert testimony that defendant used the house at 321 W. Hopkins as a "stash house" denied him a fair trial. Because defendant's claim is unpreserved, we review for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). Defendant alternatively claims that his counsel's failure to object to the admission of this evidence denied him a fair trial. Defendant did not move for an evidentiary hearing or a new trial on this basis. Therefore, our review is limited to errors apparent from the record. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). "In order for this Court to reverse on the basis of ineffective assistance of counsel, defendant must show that his counsel's performance fell below an objective standard of reasonableness and so prejudiced defendant that he was denied the right to a fair trial. *Id.* at 662, citing *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). "To establish prejudice, defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Noble, supra* at 662, citing *Pickens, supra* at 314.

We agree that the officer's expert testimony on this point was improperly admitted. *People v Williams*, 240 Mich App 316, 321; 614 NW2d 647 (2000) ("[T]o the extent the police witnesses were permitted to express the opinion or state the belief or conclusion that defendant used [the house] as a safe house, the testimony was admitted in error.") However, in light of the other evidence that defendant stored, processed and packaged cocaine at that address, we do not believe that the admission of the evidence and counsel's failure to object prejudiced defendant and denied him his right to a fair trial. *Carines, supra* at 764.

¹ At trial, the defense's theory was that the cocaine to which defendant referred in his statement was only the crack cocaine found in the kitchen. Defendant did not mention to police the cocaine found in the bedroom. We recognize this alternative interpretation of the evidence, but we must view the evidence in the light most favorable to the prosecution. Deputy Brent Miles testified that defendant told him he was making or cooking crack cocaine in the kitchen.

Finally, defendant argues that the trial court improperly permitted Deputy Brent Miles to testify to statements made by defendant. Again, defendant also claims that his counsel was ineffective for failing to object to the admission of this evidence. Defendant failed to preserve this issue, and we review this matter as stated above. Our judiciary has declined to create a rule that a defendant's statement must be recorded. *People v Fike*, 228 Mich App 178, 183-186; 577 NW2d 903 (1998). Also, the record does not support defendant's claim that the deputy "editorialized" his statements. See *People v Eccles*, 141 Mich App 523, 525; 367 NW2d 355 (1984). Although the officer testified to his opinion based upon his experience in narcotics trafficking regarding the process by which crack cocaine is made, his opinion was based on defendant's statement and the record does not suggest that he was distorting defendant's statement. Accordingly, counsel's failure to object was not unreasonable, and we are not persuaded that defendant was denied a fair trial.

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot